

Qty Purchase Agreement QPA Number	Page
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Requisition Nbr.: QPA - ISDH Test Kits for Infectious Diseases	
Effective Date: 12/20/2010	
Expiration Date: 12/31/2011	
Agency Number:	
Facility: ASA-11-013	
Vendor ID: 0000052613	
Vendor Telephone Nbr: 800-523-5001	
Name Of Contact Pers: CUSTOMER SERVICE	
FAX Number: 800-288-3141	

Name and Address of Vendor: GEN-PROBE  
Cntct: CUSTOMER SERVICE  
10210 GENETIC CENTER DRIVE  
SAN DIEGO CA 92121

In accordance with your bid, submitted in response to the above referenced solicitation, the Vendor agrees that the Indiana Department of Administration, Procurement Division, has the option to purchase the items listed below under the terms of this agreement. The Vendor agrees to charge these prices for any products ordered on any QPA release received after the expiration of the QPA but issued prior to the expiration date. The quantity listed herein is an estimate of the requirements. The state may order substantially more or substantially less pursuant to the terms of this agreement. **Orders are to be delivered only upon receipt of properly approved Quantity Purchase Award Release.**

Delivery is seven (7) days after receipt of order.

1	12.00	000000000100131869 Catalog # 302178	Kit, Aptima, HIV-1 RNA QL, 100 tests, Gen-Probe	3,000.0000
2	12.00	000000000100131870 # 302179	Kit, Aptima, HCV RNA QL, 100 tests, Gen-Probe Catalog	3,000.0000
3	12.00	000000000100131871 # 302782	Kit, Aptima, HIV QUAL, Calibrator, Gen-Probe Catalog	650.0000
4	12.00	000000000100131872 302162	Aptima QL Auto-Detect Reagents, Gen-Probe Catalog #	90.0000
5	2.00	000000000100131873	Kit, Accuprobe, Blastomyces Test. (B. Dermatitidis):	430.0000

# Quantity Purchase Agreement With The State Of Indiana

Vendor GEN-PROBE  
Remit to: PO BOX 535103  
ATLANTA GA 92121-4362

Name and Address of Vendor: GEN-PROBE  
Cntct: CUSTOMER SERVICE  
10210 GENETIC CENTER DRIVE  
SAN DIEGO CA 92121

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<b>Facility:</b>	<b>ASA-11-013</b>
<b>Vendor ID:</b>	<b>0000052613</b>
<b>Vendor Telephone Nbr:</b>	<b>800-523-5001</b>
<b>Name Of Contact Pers:</b>	<b>CUSTOMER SERVICE</b>
<b>FAX Number:</b>	<b>800-288-3141</b>

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Line Number	Quantity	UNIT	Article and Description	Unit Price
			20 tests, Gen-Probe Catalog # 102890	
6	2.00	000000000100131874	Kit, Accuprobe, Histoplasma Test, (H. Capsulatum); 20 tests, Gen-Probe Catalog # 102910	430.0000
7	1.00	000000000100131875	Kit, Accuprobe, Coccidioides Test, (C. Immitis); 20 tests, Gen-Probe Catalog # 102985	430.0000
8	2.00	000000000100131876	Kit, Accuprobe, Tuberculosis Test, (M. Tuberculosis); 20 tests, Gen-Probe Catalog # 102860	400.0000
9	12.00	000000000100131877	Tips, P1000 Style, 1000 ul, Gen-Probe Catalog # 105049	162.0000
10	2.00	000000000100131878	Kit, Detection Reagent, Gen-Probe Catalog # 201791	35.0000
11	12.00	000000000100131879	Sealing Cards, (35/Pkg) Gen-Probe Catalog # 102085	5.0000
12	48.00	000000000100131880	System Check Reagent Tubes, IVD, CDRH, Gen-Probe Catalog # 301078	0.0000

The following UN/CEFACT Unit of Measure Common Codes are used in this document:

Signature of Purchasing Officer <i>Katherine A. Harrington</i> CAPPB	Typed Name	Signature Of Approval Office Of the State Attorney General <i>Gregory F. Zoeller</i>	Date Signed <i>12/09/10</i>
Authorized Signature <i>M. J. (fol)</i>	Indiana Department Of Administration Procurement Division 402 West Washington Street, Rm W468 Indianapolis, Indiana 46204 Telephone: (317) 232-3150	Typed Name Gregory F. Zoeller	Date Signed <i>12/29/10</i>

Robert D. Wynkoop, Commissioner



# GEN-PROBE

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October 18, 2010

Indiana State Department of Health

550 W. 16th St.  
Indianapolis, IN 46202

From: Brian B. Hansen  
Vice President, Americas and Asia Pacific

Listed below are the pricing and terms for Gen-Probe's APTIMA Accuprobe family of products (individually or collectively, "Reagents").

Product Number	Product Description	Price/Kit	Monthly Purchase Quantity	Extended Monthly Price
302178	Kit, Aptima, HIV-1 RNA QL, Sales BOM	\$ 3,000.00	1.0	\$ 3,000.00
302179	Kit, Aptima, HCV RNA QL, Sales BOM	\$ 3,000.00	0.5	\$ 1,500.00
302782	APTIMA HIV QUAL Calibrator Kit	\$ 650.00	2.0	\$ 1,300.00
302162	Aptima QL Auto Detect Reagents, Sales BO	\$ 90.00	0.2	\$ 18.00
102085	Sealing Cards, 35/PKG	\$ 5.00	As Needed	\$ -
102860	Kit, AccuProbe, M. TUBERCULOSIS	\$ 400.00	0.1	\$ 40.00
102890	Kit, AccuProbe, B.DERMATITIDIS	\$ 430.00	0.2	\$ 86.00
102895	Kit, AccuProbe, C.IMMITIS	\$ 430.00	0.1	\$ 43.00
102910	Kit, AccuProbe, H.CAPSULATUM	\$ 430.00	0.1	\$ 43.00
105049	Tip, P1000 Style, 1000 ul	\$ 162.00	As Needed	\$ -
201791	Kit, Detection Rgt	\$ 35.00	0.1	\$ 3.50
301078	Kit, SYSCHECK, IVD, CDRH	\$ -	1.0	\$ -
			<b>TOTAL:</b>	<b>\$ 6,033.50</b>

Instrumentation/equipment required will include the following:

Quantity & Instrumentation	Description
1 X 302722	APTIMA HIV/HCV DTS 400
1 X 103100	LEADER 50

**Term of Agreement: (5) Years**

## PAYMENT AND SHIPPING TERMS

Payment Terms	Net 30 days from Date of Invoice
Freight Terms	Destination
Delivery	7 Business days After Receipt of Order

- Unauthorized Use.** Customer agrees to use the Equipment solely in conjunction with Reagents or other supplies expressly authorized by Gen-Probe.
- Title.** Gen-Probe shall hold exclusive title to the Equipment and may assign, transfer, pledge or sell Gen-Probe's interest in the Equipment without notice to or approval from Customer. Gen-Probe is Gen-Probe Sales & Service, Inc., a wholly-owned distribution subsidiary of Gen-Probe Incorporated. Customer shall not remove any markings from the Equipment, which identify Gen-Probe as the owner. Customer shall keep the Equipment free from any and all liens, claims and encumbrances and shall not lease, sublease, transfer, sell, or assign the Equipment. Customer does hereby make, constitute and appoint Gen-Probe as Customer's true and lawful Attorney-in-Fact for the sole purpose of executing and filing, in the name of Customer, a UCC-1 statement in favor of Gen-Probe covering the Equipment.
- Warranty and Service.** Gen-Probe warrants that the Reagents shall meet the required performance specifications to perform the desired tests as described in the Package Inserts. The extent of Gen-Probe's liability under this warranty is limited to replacing any defective Reagent. Gen-Probe does not manufacture the System. The System is warranted through manufacturers as described in the Operator's Manual provided to Customer and such warranties extend to Gen-Probe's customers. Gen-Probe may, at its option, repair or replace any defective System. The foregoing warranty shall not apply in the event that: (a) Customer has not used and maintained the System in accordance with the guidelines set forth in the Operator's Manual provided to Customer; (b) if Customer has used the System with reagents and supplies not expressly authorized by Gen-Probe; (c) if the System is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written approval; or (d) if the System has been subject to misuse, negligence, or accident.

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THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

- 4 **Maintenance and Repair.** Customer agrees to maintain the Equipment in good operating condition and assumes all risks of loss and damage to the Equipment, except as covered in Warranty and Service, above. In the event of loss or damage, Customer will pay Gen-Probe the depreciated price of the lost or damaged item of Equipment.
- 5 **Limitation of Liability.** EXCEPT FOR PAYMENTS DUE PURSUANT TO PAYMENT AND SHIPPING TERMS (ABOVE), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR COSTS INCURRED BY THE OTHER PARTY IN CONNECTION WITH THE USE OF THE EQUIPMENT OR REAGENTS BY CUSTOMER OR ANY OTHER PERSON UTILIZING EQUIPMENT NOR SHALL GEN-PROBE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE REAGENTS OR EQUIPMENT. Such limitation is intended to apply without regard to whether such damages are claimed, asserted or brought in an action or claim sounding in tort or contract, or on the warranty, or under any other law or form of action.
- 6 **Default.** The occurrence of any of the following events shall constitute a default ("Default") by Customer: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; (b) Customer's failure to perform any covenant or condition of this Agreement; (c) Customer becomes insolvent or unable to pay debts as they mature; (d) Customer files for protection under any bankruptcy or similar laws or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against Customer or its property; (e) Customer makes an assignment for the benefit of its creditors; or (f) if any substantial attachment or execution be levied on any of Customer's property. In the event of a Default hereunder, all indebtedness of Customer hereunder may, at the option of Gen-Probe and without demand or notice of any kind, be declared, and thereupon immediately become, due and payable, and in addition to all other remedies, all of which are cumulative, Gen-Probe may (i) require Customer to return the Equipment and make the Equipment available to Gen-Probe at a place designated by Gen-Probe, and/or (ii) immediately terminate this Agreement.

Gen-Probe shall be entitled to recover from Customer any and all expenses and damages which Gen-Probe sustains by reason of said Default including but not limited to reasonable attorneys' fees and all expenses of repossession, removal, storing, and disposition of the Equipment. The remedies and rights specified herein shall not be exclusive and shall be cumulative. The exercise or the non-exercise of any right or remedy shall not limit or prejudice Gen-Probe as to that right or remedy or as to any other rights or remedies provided by applicable law.

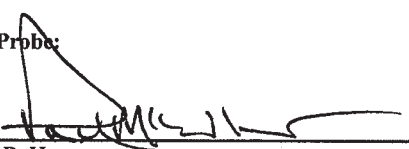
- 7 **CONFIDENTIALITY.** Customer acknowledges the existence of the trademarks, copyrights, patents, and other intellectual property rights relating to the use or subsisting in or in connection with the System including software, hardware, and other parts thereof in which Gen-Probe or a third party has an interest are, and shall remain, the sole property of Gen-Probe or the respective third party. Customer shall not at any time dispute Gen-Probe's ownership thereof. Customer shall hold in confidence all materials or information disclosed to it by Gen-Probe hereunder ("Confidential Information"). In addition to the foregoing, Gen-Probe Confidential Information includes the operator's manual, the System price and payment terms. Customer agrees to take precautions to prevent the unauthorized disclosure or use of Confidential Information consistent with precautions used to protect its own confidential information, but in no event less than reasonable care.

The obligations of Customer hereunder shall not apply to materials or information which (a) is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known or available; (b) is known by Customer at the time of receiving such information as evidenced by its records; (c) is hereafter furnished to Customer by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by Customer without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by Gen-Probe. Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body or is otherwise required by law; provided, however, that Customer shall first have given notice to Gen-Probe and shall have made a reasonable effort to obtain confidential treatment of such Confidential Information; (ii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

- 8 Any additional terms and conditions accompanying subsequent Customer Purchase Order or other documentation must be agreed upon, in writing, and signed by both parties in order to be valid.

Should you have any questions, please call your local Sales Representative at 800-523-5001.

Gen-Probe:

  
Brian B. Hansen  
Vice President, Americas and Asia Pacific

Date

10/19/2010

Customer:

Signature and Title

Date



## TERMS AND CONDITIONS

1. **ACKNOWLEDGMENT:** This Agreement contains the complete and final Agreement between the State and the Contractor and no other Agreement in any way modifying any of said terms and conditions will be binding upon the State or the Contractor unless made in writing and signed by the State's and the Contractor's authorized representative.
2. **PRICING:** Unit price must be entered and extended, and the total price of the solicitation must be shown. If there is an error between the unit price and total price, the unit price shall prevail. Awarded Prices: Prices listed for each item are firm and cannot be changed. Any revision in price may be rejected at the discretion of the IN Dept. of Administration, and may result in cancellation of the Purchase Order without recourse on the part of the awarded Contractor.
3. **TERMINATION FOR CONVENIENCE:** This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be affected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The Contractor shall be compensated for performance prior to the notice date of termination but in no case shall total payment made to Contractor exceed the original Agreement price due on Agreement. No price increase shall be allowed on individual line items if canceled only in part.
4. **FUNDING CANCELLATION:** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
5. **INSURANCE:** If this Agreement provides for work to be performed by the Contractor for the State, the Contractor shall be responsible for providing all necessary unemployment and workers' compensation, insurance for the Contractor's employees and liability and property/casualty insurance, as required by the State. Upon request, the Contractor shall furnish a certificate of insurance showing coverage acceptable to the State.
6. **DELIVERY:** Delivery must be made at time agreed upon. If any indicated or actual delays arise, the using agency must be notified immediately, in writing, with the cause for such delay stated. If any goods are not delivered within the time specified on the Purchase Order, or within a reasonable time not exceeding 30 days after receipt of a Purchase Order if no time is specified, the using agency may refuse to accept such goods, and this Agreement may be cancelled. Each package shall be numbered and labeled with the State's Purchase Order number, contents and weight, and shall contain an itemized packing slip and be properly packed for shipment.
7. **QUANTITY:** Goods shipped in excess of quantity designated in the Purchase Order may be returned at the Contractor's expense.
8. **COMPLIANCE WITH SPECIFICATIONS:** The goods and/or services shall conform strictly to the specifications, drawings, or samples specified or furnished in connection with the bid/quote, all of which are incorporated herein. The Contractor warrants all goods and/or services delivered to be free from defects of material or workmanship. This warranty shall survive any inspection, delivery, acceptance, or payment by the State of the goods and/or services. Inspections shall be on the State's premises unless otherwise specified. The State shall have the right to reject and return at the Contractor's expense, or to require at the Contractor's expense, the correction or replacement of materials, workmanship, or services which are defective or do not conform to the requirements of the Purchase Order.
9. **WARRANTY:** The Contractor will furnish all parts and maintenance at no charge for a period of at least 90 days or the manufacturer's standard warranty, whichever is longer, provided that such maintenance and parts are not required because of accident, neglect, misuse, or force majeure event. Contractor shall be responsible for removal and/or disposal of all replaced parts. Prior to the expiration of the warranty period, whenever equipment is shipped for a mechanical replacement purpose, the Contractor shall bear all cost of such shipment including, but not limited to, cost of packing, transportation, rigging drayage, and insurance. All replacements shall be covered by a new warranty.
10. **INTELLECTUAL PROPERTY DEFENSE:** The Contractor shall, at its own expense, defend, indemnify and hold harmless the State with respect to any claims that the goods and/or services furnished under this Agreement violates any third party intellectual property rights including, but not limited to, patents, copyrights, trademarks and trade secrets.
11. **PAYMENTS:** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.
12. **COMPLIANCE WITH LAWS:** The Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the State and the Contractor to determine whether the provisions of this Agreement require formal modification.
13. **COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT:** As required by IC 5-22-3-7, the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law. The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
14. **NONDISCRIMINATION:** Pursuant to IC 22-9-1-10 and Civil Rights Act of 1964, the Contractor and its Agents, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, sex, disability, national origin, ancestry or status as a veteran. The Contractor, and its subcontractor(s), if any, shall comply with all applicable affirmative action reporting requirements. Breach of this covenant may be regarded as a material breach of this Agreement. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended.
15. **DRUG-FREE WORKPLACE CERTIFICATION:** As required by Executive Order No. 90-5, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in Indiana has been convicted of a criminal drug violation occurring in the Contractor's workplace.
16. **TAXES:** Prices listed on an invoice submitted by the Contractor for payment is not to include any tax for which the State is exempt. The State will furnish a tax exempt certificate, if requested by the Contractor. The State will not be responsible for any taxes levied on the Contractor as a result of this Agreement.
17. **FORCE MAJEURE:** In the event that either party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits, because of natural disaster or decrees of governmental bodies not the fault of the affected party ("Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
18. **GOVERNING LAWS:** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
19. **INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS:** If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Agreement for default if Contractor fails to cure a breach of this provision within a commercially reasonable time.